

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with James Armstrong on 09/28/09.

The application has been amended as follows:

In The Abstract:

The abstract on page 60 is replaced with the following:

-----The present invention relates to isolated promoter sequences responsive to germ infection and functioning in plants; vectors and DNA comprising the promoter sequences are also disclosed. The invention further relates to methods of transforming plants with a DNA construct comprising a germ responsive promoter operably linked to a pathogen resistant gene. ----

In The Claims:

Claim 1 (currently amended): An isolated pathogen-responsive promoter, comprising [: (a) a DNA comprising] the nucleotide sequence shown in SEQ ID NO: 1,

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wherein the promoter functions [and functioning as pathogen-responsive promoter] in plant cells.

Claim 2 (currently amended): An isolated pathogen-responsive promoter, comprising [: (a) a DNA comprising] the nucleotide sequence shown in SEQ ID NO: 2, wherein the promoter functions [and functioning as pathogen-responsive promoter] in plant cells.

Claim 4 (currently amended): An isolated pathogen-responsive promoter, comprising [: (a) a DNA comprising] the nucleotide sequence shown in SEQ ID NO: 22, wherein the promoter functions [and functioning as pathogen-responsive promoter] in plant cells.

Claim 5 (Currently amended): A pathogen-responsive promoter [functioning as pathogen- responsive promoter in plant cell and comprising: (I) a DNA] comprising the nucleotide sequence shown in SEQ ID NO:23; wherein the promoter functions in plant cells.

Claim 6 (Currently amended): The pathogen-responsive promoter according to Claim 5, wherein the promoter is [which is characterized by being] responsive [specifically] to Phytophthora infection.

Claims 7 and 10 are cancelled.

Claim 11 (currently amended): A DNA construct comprising the pathogen responsive promoter according to Claim 5 and a gene operably linked under the control of the promoter and expressed in plant to activate the defense response of the plant.

Claim 16 (Currently amended). A [transformant derived from host] plant transformed with [by] the DNA construct according to Claim 11.

Claim 17 (Currently amended): The plant [transformant] according to Claim 16, wherein the [host] plant belongs to Solanaceae.

Claim 18 (original): The plant [transformant] according to Claim 16, wherein the host plant belongs to *Solanum tuberosum*.

Claim 19 (Currently amended). A method for producing a transgenic plant, comprising the step of: transforming a [host] plant with the DNA construct of Claim 11.

Claim 20 (Currently amended). A method for inducing pathogen resistance to a [host] plant, comprising the step of: transforming the [host] plant with the DNA construct according to Claim 11.

Claim 21 (Currently amended): A pathogen resistant plant produced by the method of Claim 20 [into which a pathogen-responsive promoter according to Claim 5 has been exogenously introduced].

Claim 22 (Currently amended): A transgenic plant produced by the method of Claim 19 [into which the DNA according to Claim 8 has been exogenously introduced].

Claim 23 (Currently amended): An isolated pathogen-responsive promoter consisting of [a DNA comprising] SEQ ID NO: 1 , wherein the promoter functions [and functioning as pathogen-responsive promoter] in plant cells.

Claim 24 (Currently amended): An isolated pathogen-responsive promoter consisting of [a DNA comprising] SEQ ID NO: 2 , wherein the promoter functions [and functioning as pathogen-responsive promoter] in plant cells.

Claim 25 (Currently amended): An isolated pathogen-responsive promoter consisting of [a DNA comprising] SEQ ID NO: 22 , wherein the promoter functions [and functioning as pathogen-responsive promoter] in plant cells.

Claim 26 is cancelled.

### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Medina A. Ibrahim whose telephone number is (571)272-0797. The examiner can normally be reached on M-TH 8:00 am to 5:30 PM, and every other Friday from 8:00 AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAI  
9/29/2009

/Medina A Ibrahim/  
Primary Examiner, Art Unit 1638